

REMARKS

Claims 1-4 were pending in this application.

Claims 1-4 have been rejected.

Claims 1-4 have been amended.

Claims 5-20 have been added.

Claims 1-20 are now pending in this application.

Reconsideration and full allowance of Claims 1-20 are respectfully requested.

I. REJECTIONS UNDER 35 U.S.C. § 102

The Office Action rejects Claims 1-3 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,288,982 to Kato (“*Kato*”) or by U.S. Patent No. 6,633,517 to Nakamichi (“*Nakamichi*”). These rejections are respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Kato recites an apparatus for locating disks and identifying the diameters of the disks. (*Abstract*). The apparatus includes “L-shaped detection members” (elements 14 and 15). (*Col. 5*,

Lines 41-44). Each detection member includes two elongated holes (elements 14a1, 14a2, 15a1, 15a2), and pins (elements 17a-17d) are inserted through the holes. (*Figure 1; Col. 5, Lines 44-55*). This allows the detection members to slide back and forth along an X-axis. (*Col. 5, Lines 50-51*). Attached to one of the detection members is a position sensor (element 18), which measures movement of the detection member. (*Col. 6, Lines 22-39*).

Regarding Claim 1, *Kato* simply recites the use of two detection members that can move back and forth in a single dimension. *Kato* lacks any mention that the detection members are capable of pivoting about an axis. In particular, *Kato* lacks any mention of a “loading mechanism” for loading and unloading an information plate, where the loading mechanism includes guides arranged on “pivoting arms” as recited in Claim 1. As a result, *Kato* fails to anticipate these elements of Claim 1.

Regarding Claim 3, *Kato* contains no mention of using an encoder switch as a position sensor. The Office Action asserts that *Kato* discloses the use of an encoder switch at column 6, lines 22-28. (*Office Action, Page 3, Second paragraph*). However, this portion of *Kato* simply recites that the position sensor (element 18) detects changes in resistance. This portion of *Kato* contains no mention of an encoder switch. Moreover, the Office Action is inconsistent in its interpretation of this portion of *Kato*, citing the exact same portion of *Kato* as anticipating the use of a “variable resistor” as recited in Claim 2. In addition, this portion of *Kato* lacks any mention of changing a code used by the encoder switch. Based on this, *Kato* fails to anticipate a “position sensor” that comprises an “electronic encoder switch,” where a “scanning lever” changes a code of the encoder switch in “dependence on the position of [an] information plate” as recited in Claim 3. As a result,

Kato fails to anticipate these elements of Claim 3.

For these reasons, the Office Action fails to anticipate the Applicants' invention as recited in Claims 1 and 3 (and Claim 2 depending from Claim 1).

Nakamichi recites a disk playback device that has a smaller depth. (*Abstract*). The device includes two holder plates (elements 19 and 20) that are coupled by a connecting member (element 21). (*Col. 4, Lines 35-36*). The device also includes multiple drive rollers (elements 41-44), most of which are driven by a belt. (*Col. 5, Lines 15-41*).

Regarding Claim 1, *Nakamichi* simply recites that various "holder plates" may be connected and that various "drive rollers" may be rotated by a belt. *Nakamichi* lacks any mention that the holder plates are capable of pivoting about an axis or that the drive rollers are located on arms that can pivot. In particular, *Nakamichi* lacks any mention of a "loading mechanism" for loading and unloading an information plate, where the loading mechanism includes guides arranged on "pivoting arms" as recited in Claim 1. As a result, *Nakamichi* fails to anticipate these elements of Claim 1.

Regarding Claim 3, *Nakamichi* contains no mention of using an encoder switch as a position sensor or changing a code used by the encoder switch. Moreover, the Office Action does not identify any portion of *Nakamichi* disclosing the use of an encoder switch. Based on this, *Nakamichi* fails to anticipate a "position sensor" that comprises an "electronic encoder switch," where a "scanning lever" changes a code of the encoder switch in "dependence on the position of [an] information plate" as recited in Claim 3. As a result, *Nakamichi* fails to anticipate these elements of Claim 3.

For these reasons, *Nakamichi* fails to anticipate the Applicants' invention as recited in Claims

1 and 3 (and Claim 2 depending from Claim 1).

Accordingly, the Applicants respectfully request withdrawal of the § 102 rejections and full allowance of Claims 1-3.

II. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects Claim 4 under 35 U.S.C. § 103(a) as being unpatentable over *Kato* in view of *Nakamichi*. This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself

suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

As shown above in Section I, both *Kato* and *Nakamichi* fail to disclose, teach, or suggest a “loading mechanism” that includes “two guides arranged on pivoting arms” as recited in Claim 4. As a result, the proposed *Kato-Nakamichi* combination fails to disclose, teach, or suggest all elements of Claim 4.

For these reasons, the Office Action has not established a *prima facie* case of obviousness against Claim 4. Accordingly, the Applicants respectfully request withdrawal of the § 103 rejection and full allowance of Claim 4.

III. NEW CLAIMS

The Applicants have added new Claims 5-20. The Applicants respectfully submit that no new matter has been added. The Applicants respectfully request entry and full allowance of Claims

5-20.

IV. CONCLUSION

For the reasons given above, the Applicants respectfully request reconsideration and full allowance of all pending claims and that this application be passed to issue.

SUMMARY


If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

The Applicants have included the appropriate fee for the addition of the new claims. The Applicants believe that no additional fees are due. The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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